

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 566 of 1996

in

SPECIAL CIVIL APPLICATION No 1357 of 1996

With

CIVIL APPLICATION NO. 4788 OF 1996

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

and

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHARAT COOPERATIVE BANK LTD

Versus

GUJARAT BANK WORKERS UNION

Appearance:

1. LETTERS PATENT APPEAL No. 566 of 1996
MR BS PATEL for Appellant No.
MRS RANJAN B PATEL for Appellant No.
NOTICE SERVED BY DS for Appellant No.
MR MS MANSURI for Respondent No. 1
MS HINA DESAI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 1
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 10/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

1. Learned advocates Mr. Patel and Ms. Desai are not present on call. Mr. Mansuri has filed sick note.

2. The appellant The Bharat Cooperative Bank Ltd (hereinafter referred to as the "Bank") challenges the judgment & order dated 17th April, 1996 passed by the learned Single Judge in Special Civil Application No. 1357 of 1996.

3. The respondent - writ petitioner is the representative union (hereinafter referred to as the "Union"). It had preferred the above Special Civil Application No. 1357 of 1996 against the orders dated 16th February, 1996 made by the Bank dismissing one Nitinbhai Patel, a peon and one Jagdishbhai Sheth, a Junior Clerk in the Bank (hereinafter referred to as "the workmen"). It was alleged that the impugned orders of dismissal were made without holding inquiry in the alleged misconduct of misappropriation on specious ground of loss of confidence.

4. The writ petition was defended by the Bank on the grounds, inter alia, that the concerned workmen had an efficacious alternative statutory remedy under the Industrial Disputes Act, 1947. The learned Single Judge by the impugned judgment has accepted the said defence and has held that the alternative remedy was better suited and the Bank shall have opportunity to prove the misconduct before the alternative forum. However, while disposing off the petition the learned Single Judge was of the opinion that the workmen had a right to receive subsistence allowance until the alleged misconduct was proved against them before the court. It was, therefore, observed that " in the event of the respondent-Bank failing to point out any insurmountable difficulty to hold an inquiry, the workmen will be entitled to receive subsistence allowance, if they choose to apply for the same, by way of interim relief under Section 119D of the B.I.R. Act, 1946. In that event the Labour Court will consider the relevant provisions of the Standing Orders governing subsistence allowance and mould the relief appropriately."

Feeling aggrieved the Bank has preferred the present Appeal under Clause-15 of the Letters Patent.

5. We are of the opinion that the Bank shall not have a legitimate grievance against the aforesaid observation made by the learned Single Judge. In any view of the matter the aforesaid observation can not be said to be a 'Judgment' as envisaged by clause 15 of the Letters Patent. The present Appeal is, therefore, not maintainable. Further, from the records we gather that pending this Appeal the workmen / the union had approached the Labour Court in the subject matter. The Labour Court had by order dated 7th June, 1996 ordered payment of subsistence allowance to the workmen. The said order was challenged before this Court in a substantive writ petition. In view of the said development also this appeal shall not survive.

6. For the aforesaid reasons the Appeal is dismissed. There shall be no order as to cost.

7. In view of the order in Appeal, civil application stands disposed off. Notice is discharged.

Dt:10-1-2005

(MS. R.M. DOSHIT, J)

(S.R. BRAHMBHATT, J)

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